

TOWN OF WEST SENECA



TINA M. HAWTHORNE
TOWN ATTORNEY
thawthorne@twsny.org

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: December 13, 2019

Subject: Memorandum of Agreement
CSEA – Town of West Seneca – White Collar Unit

Kindly see the attached resolution providing legislative approval for the attached Memorandum of Agreement between the Town of West Seneca and the CSEA Town of West Seneca White Collar Unit (the "White Collar Unit") and adopting the Parental Leave Policy for the White Collar Unit.

If the resolution is adopted, the Memorandum of Agreement will be considered part of the Town/CSEA Collective Bargaining Agreement as Appendix O of the contract and the Parental Leave Policy will be in full force and effect.

TOWN OF WEST SENECA



TINA M. HAWTHORNE
TOWN ATTORNEY
thawthorne@twsny.org

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

RESOLUTION

WHEREAS, the CSEA White Collar Unit and the Town of West Seneca are parties to a Collective Bargaining Agreement (hereinafter referred to as "CBA") covering the period January 1, 2016 through December 31, 2021; and

WHEREAS, the parties wish to modify the CBA by extending the term of the CBA for a two (2) year period, continuing a 2% salary rate increase for each of the two years, establishing a joint labor/management committee for the purposes of reviewing the health care policies, and the addition of a drug and alcohol testing policy; and

WHEREAS, the Town Board of West Seneca has determined that it is in the best interest of West Seneca and its residents to enter into the Memorandum of Agreement with CSEA White Collar Unit; and

WHEREAS, the Town Board of West Seneca has further determined that the adoption of a Parental Leave Policy for White Collar employees is in the best interest of West Seneca and its residents; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Memorandum of Agreement between the Town of West Seneca and the CSEA White Collar Unit and implement the Parental Leave Policy.

MEMORANDUM OF AGREEMENT

This Agreement, by and between the Civil Service Employees Association Inc., Local 1000, AFSCME, AFL-CIO on behalf of the CSEA Town of West Seneca White Collar Unit (hereinafter referred to as "CSEA White Collar Unit") and the Town of West Seneca (hereinafter referred as the "Town"), jointly the "Parties."

WHEREAS, the CSEA White Collar Unit and the Town are parties to a Collective Bargaining Agreement covering the period of January 1, 2016 through December 31, 2021 (the "CBA"); and

WHEREAS, The Parties wish to modify the CBA as set forth herein; and

WHEREAS, the parties wish to extend the term of the CBA, as modified by this Agreement, for a period of two (2) years, up to and including December 31, 2023.

NOW, THEREFORE BE IT AGREED, as follows:

1. The terms of the CBA are extended through December 31, 2023.
 - i. The Cover Page of the CBA shall reflect the term of the agreement as follows:

January 1, 2016 – December 31, 2021
and
January 1, 2022 – December 31, 2023
 - ii. Article 31(Term Of Agreement), Section 31.1 of the CBA is modified to add the following language at the end of the section. "Based on the Memorandum of Agreement between the Town and the CSEA White Collar Unit dated December ____, 2019 this Agreement shall remain in full force and effect until Midnight, December 31, 2023 and shall continue in effect thereafter until such time as a subsequent agreement becomes effective."
2. Article 25 (Salaries), Section 25.1 (Increases) shall be modified to add the following language at the end of the section.
 - i. Effective January 1, 2022, each employee covered under this contract shall receive an increase in his or her 2021 salary at rate of 2.0%.
 - ii. Effective January 1, 2023, each employee covered under this contract shall receive an increase in his or her 2022 salary at rate of 2.0%.

3. The Town and CSEA agree to establish a joint labor/ management committee for the purposes of reviewing the health care policies for performance and to explore potential cost saving measures.
4. Appendix O: Drug and Alcohol Testing Policy is added to the CBA and will read as follows:

Appendix O: Drug and Alcohol Testing Policy

I. PURPOSE

The Town of West Seneca Drug and Alcohol Testing Policy is designed to ensure a safe, drug and alcohol free workplace for all employees and residents of the Town and to aid the Town in maintaining the trust of the public. This policy is intended to set forth reasonable guidelines for post-accident and reasonable suspicion drug and alcohol testing of Town Employees.

The parties agree that members of the CSEA White Collar Bargaining Agreement do not hold "safety sensitive positions" as defined by the Omnibus Transportation Employees' Testing Act ("OTEA"), nor are any employees required to possess a CDL (commercial driver's license) as a term and condition of employment in accordance with the employee's civil service job specification. The Parties further agree that some CSEA represented bargaining unit employees of the Town are required to possess a valid driver's license in connection with their employment with the Town, that they are, from time to time, required to drive in the course of their employment with the Town and that they may be required to operate at Town vehicle in connection with their employment with the Town.

In accordance with Section 204 of the New York State Public Employees' Fair Employment Act, the parties hereby agree to the following post-accident and reasonable suspicion drug and alcohol testing procedure(s).

II. POLICY STATEMENT

1. Employees of the Town of West Seneca are prohibited from reporting for duty under the influence of alcohol, illegal drugs, or drugs that are being used illegally.
2. Employees of the Town of West Seneca are prohibited from using, selling, buying, obtaining, distributing, dispensing, possessing, transporting, or manufacturing alcohol or illegal drugs, drugs that are being used illegally, or drug paraphernalia while on Town property, while on duty for the Town, or while in a Town- owned vehicle or a leased vehicle.
3. This Memorandum of Agreement does not pertain to legal substances, being used legally that are stored in an employee's personal vehicle(s) parked on Town property.

4. The Town may send an employee for drug and alcohol testing for reasonable suspicion and following an accident as further described herein. Employees covered by this policy who test positive will be subject to Appendix L to the CBA-Disciplinary-Discharge Procedure and any discipline/discharge issued to an employee may be appealed through the grievance and arbitration process set forth in Article 24 of the CBA.
5. Should the parties disagree on the meaning or application of any portion of this Drug and Alcohol Testing Policy the aggrieved party shall file a grievance and it shall be subject to the grievance and arbitration procedure set forth in Article 24 of the CBA.
6. This policy is effective thirty (30) days after the Town provides written notice to the CSEA Unit President that the Town has made available to employees and to all supervisors and managers of such employees a Drug and Alcohol Education Program as described herein.

III. PRECONDITIONS TO REASONABLE SUSPICION & POST ACCIDENT TESTING

1. At least 30 days prior to the implementation of this Policy, the Town will make available to employees covered by this White Collar CBA and to all supervisors and managers of such employees a Drug and Alcohol Education Program relating to the drug and alcohol testing policy and procedures provided herein.
2. The term "prohibited drugs" means Amphetamines, Barbituates (urine), Benzodiazepines, Buprenorphine, Cocaine, Methamphetamine 1000, Methadone, Opiates, Oxycodone, Heroin, and Phencyclidine. While Marijuana shall not be considered a "prohibited drug" for the purposes of testing, employees shall be prohibited from bringing marijuana and any apparatus used to ingest marijuana on Town property.
3. The Town will use Healthworks or a New York State Department of Transportation certified testing facility, collection site, and medical review officer.
4. Educational Training: Prior to the implementation of this Drug and Alcohol Testing Policy, the Town will make available to the Town Supervisor, Town Board members, the Human Resources Department, the Town Attorney, Town department heads, the CSEA White Collar Bargaining Unit President, and one additional CSEA White Collar Bargaining Unit representative who is employed with the Town, with a minimum of sixty (60) minutes of training on how to identify signs of intoxication/impairment for purposes of reasonable suspicion drug and alcohol testing. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substance(s). Such training must be completed before an employee undergoes

a test. Prior to any employee being tested for reasonable suspicion or post accident testing, a majority of three (from a group of two management personnel and one union designee) must agree that just cause exists. Training will be refreshed at least every two years.

5. The following drug and alcohol reasonable suspicion and post-accident methodology shall be utilized for any drug and/or alcohol test performed:
 - a. Initial Test - The initial test shall use an immunoassay (EMIT) test as a screening test to rule out the presence of a controlled substance or its metabolite. Those samples which test positive shall be subject to confirmatory testing as described below.
 - b. Confirmatory Testing - All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry ("GC/MS") technique. Testing shall be conducted by a laboratory with National Institute on Drug Abuses ("NIDA") certification. All confirmed test results shall be referred to a medical review officer (MRO), described below.
 - c. Cutoff Levels - A positive controlled substance test shall be a specimen that tests at or above the cutoff levels used by the United States Department of Transportation and/or Federal Highway Administration. Tested levels which fall below these cutoff levels shall be considered negative results.
 - d. In accordance with the Federal Regulations, the employee shall be permitted to be present to observe the sealing and tagging of the specimen containers.

IV. DEFINITIONS

1. Test - Refers to an on duty, reasonable suspicion or post-accident drug and/or alcohol test.
2. Urine Test - A urine sample submitted to a laboratory for testing.
3. Collection Site - Healthworks, another New York State Department of Transportation approved site or the work location where employees present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs and/or alcohol for reasonable suspicion testing or post-accident testing.
4. Medical Review Officer (MRO) - A licensed physician responsible for receiving laboratory results generated by the TOWN 's testing program who has knowledge of substance abuse disorders and has appropriate medical training to

interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information. The MRO will be a New York State Department of Transportation certified MRO.

5. Positive Test Result - A test result that shows evidence of a drug, drug metabolite or alcohol without a valid medical explanation at or above the cutoff level assigned to that substance as reviewed by MRO.
6. Rehabilitation – Restoring someone's health through treatment for drug/alcohol use.
7. Treatment - A therapeutic residential or outpatient treatment program for individuals with drug and/or alcohol substance abuse issues.

V. REASONABLE SUSPICION TESTING

1. Determination of Reasonable Suspicion: An employee may be tested where there exists a "reasonable suspicion" that the employee is under the influence of drugs/alcohol as defined under the provision of this policy. The term "reasonable suspicion" shall be defined as observed aberrant unusual behavior on-duty not immediately explained by causes other than that of drug/alcohol use, and/or the physical manifestation of drug/alcohol use (e.g., including, but not limited to such things as, drug paraphernalia, observed possession of drugs, open container containing alcoholic beverage, slurred speech, bloodshot eyes/dilated pupils, unsteady walk/uncoordinated movement, etc.).
2. The conduct giving rise to "reasonable suspicion" that an employee is under the influence of alcohol or using drugs must be supported by evidence or information which appears reliable. Such evidence shall be of the weight and persuasiveness as to cause at least two individuals (who have received the training on how to identify signs of intoxication/impairment for purposes of reasonable suspicion drug and alcohol), based upon their judgment, experience, and training, to reasonably suspect that a particular employee is under the influence of alcohol or drugs. This suspicion must be supported by specific, articulate, written facts from which a rational inference can be drawn, not based upon a mere hunch or solely upon poor work performance or personality conflicts. The employee and the CSEA President shall be provided with a copy of the specific, written facts constituting the reasonable suspicion within 24 hours of the time the employee is instructed that he/she will be subject to reasonable suspicion testing.
3. If suspicion of drug/alcohol use is based upon observation of the suspected employee's physical appearance, at least two individuals who have received the training on how to identify signs of intoxication/impairment for purposes of reasonable suspicion drug and alcohol testing must make and document the observations. Circumstances which constitute a basis for determining

“reasonable suspicion” may include, but are not limited to, a pattern of abnormal or erratic behavior, information provided by a reliable and credible source (excluding co-worker’s with personality conflicts), direct observation of drug and/or alcohol use, glassy or bloodshot eyes, slurred speech, poor coordination, poor reflexes or an employee’s inability to perform his/her assigned duties in a safe and satisfactory manner due to suspected drug or alcohol use. The employee shall be provided with a copy of the documented observations constituting reasonable suspicion within 24 hours of the time the employee is instructed that he/she will be subject to reasonable suspicion testing.

4. Right to Representation: When a decision is made for the employee to be tested, the employee shall be advised that he/she can consult with a Union representative so long as that consultation does not delay the testing.
5. Transportation: The employee shall be transported to the testing facility by his/her department head or the department head’s designee in a vehicle designated by the Town. The Town may send a representative with the transportation vehicle.
6. Compensation: All time spent administering an alcohol or drug test, stemming from reasonable suspicion, will be paid at the employee’s regular hourly rate of pay or at their overtime rate, if applicable, including travel time to and from the testing facility and all time spent administering the test.
7. When an employee is called in to work on an overtime basis and declines to report due to his acknowledgement that he has consumed alcohol within four (4) hours of the call-in he shall not be required to report and will not be subject to disciplinary action.
8. Any such discipline assessed will be removed from the employee’s file twelve (12) months after the date effective, providing no additional discipline relating to a positive drug/alcohol test has occurred.
9. For employees with responsibilities such as driving or operation of equipment, during the period while awaiting test results, they may return to work, but must be assigned to desk work until cleared to regular work duties.

VI. POST ACCIDENT TESTING

1. Post accident testing shall be defined as an “accident involving the loss of life or property or vehicle damage.”
2. All time spent administering a post-accident alcohol or drug test, will be paid at the employee’s regular hourly rate of pay or at their overtime rate, if applicable, including travel time.

3. Any employee who is not allowed to return to work while awaiting test results arising out of post-accident testing may use paid leave benefits (vacation, personal leave, sick leave, compensatory leave, at the employee's choice) during the waiting period for time lost and will be reimbursed by the Town for all time lost should the test results prove negative.
4. Right to Representation: Should it be determined that a drug and/or alcohol test is required after an accident, the employee shall be advised that he/she can consult with a union representative, as long as that consultation will not cause a delay in the testing process.
5. Any such discipline assessed will be removed from the employee's file twelve (12) months after the date effective, providing no additional discipline relating to a positive drug/alcohol issue has occurred.

VII. TESTING PROCEDURES

1. Drug Testing Procedures

The following procedure shall be used whenever an employee is required to give a urine sample based on reasonable suspicion or post-accident testing for reasonable suspicion of drugs.

- A. A urine sample will be taken of the employee. The collection shall be done in such a manner as to protect the authenticity and reliability of the sample and the privacy of the individual.
- B. Immediately after the sample has been given, it will be divided into two (2) parts, labeled Sample A and Sample B, provided at least 45 ml. has been provided. The "A" sample shall contain a minimum of 30 ml., and the "B" sample shall contain 15 ml. Each sample will be separately sealed, labeled, and stored in a secure and refrigerated atmosphere for transfer to the testing laboratory under a chain of custody.
- C. In each instance of a drug test, a chain of custody procedure will be followed. This procedure is used to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.
- D. A chain of custody shall be used from the time of collection to receipt by the testing laboratory(s). Upon receipt by the testing laboratory(s), an appropriate laboratory chain of custody form accounting for the sample within the laboratory shall be used.
- E. A tamper proof sealing system shall be used in the manner such that the specimen bottle will be sealed against undetected opening and the bottle

can be identified utilizing an identification number identical to that appearing on the urine custody and control form. Space shall be provided to initial the bottle, thereby affirming its identity.

- F. Should the employee be unable to pass the required amount of urine, he/she shall remain at the collection center and follow all directives given by the collection site person until such time as 45 ml. or more of urine has been passed. Should the employee be unable to pass at least 45 ml. of urine during his/her shift, he/she shall be referred to a designated physician who shall determine if such inability was purposefully done or medically unavoidable. If medically unavoidable, the employee shall be retested within twenty-four (24) hours of his/her next working day.
- G. Any sample which has been adulterated, substituted, or shown to be a substance other than urine shall be reported as such and will be considered a failure to submit to a test and will be considered the equivalent of a positive test and will constitute grounds for disciplinary action.
- H. All testing will be done during working hours to the extent possible. However, where a reasonable suspicion arises or an accident occurs in the latter part of the employee's shift, the testing may extend beyond the end of the employee's regularly scheduled shift. In that event, refer to compensation above.

2. Alcohol Testing Procedures

- A. Tests for alcohol shall only be conducted by a breath alcohol technician using an evidential breath-testing device. Such device shall be approved by the National Highway Traffic Safety Administration and placed on the Conforming Products List of Evidential Breath Measurement Devices.

VIII. REPORT AND REVIEW BY MRO

- 1. All confirmed positive drug test results shall be referred to an MRO who shall perform the following tasks:
 - A. Review the chain of custody documents and test results for completeness and accuracy.
 - B. Give the employee an opportunity to discuss the results. Any employee who tests positive will be afforded an opportunity to justify the test results, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication or other substance.

- C. If there appears to be no medical reason for the positive test result, which is acceptable to the MRO, the test shall be verified as positive and the same reported to the Human Resources Department of the Town.
- D. Should the employee provide a medically acceptable explanation and/or documentation to the MRO, the MRO shall report the test as negative to the collection clinic, which in turn shall report same to the Human Resources Department of the Town.

IX. RETEST PROCEDURES FOLLOWING POSITIVE DRUG TEST RESULTS

If the confirmatory test and medical review is positive for the presence of an alcohol, illegal drug, or drugs that are being used illegally, the employee will be so notified and provided with copies of all documents pertinent to the test. If the test is confirmed as positive by the MRO, the employee will have the opportunity to request the "B" sample be retested at a laboratory of his/her choice and at his/her expense. The MRO will authorize release of this test to the laboratory. If the "B" sample is negative, the employee will be reimbursed for the cost of the retest and no action will be taken. Should the second result be positive, the employee and the Union waive any right to challenge the testing protocol for either sample.

X. SPECIMEN INTEGRITY AND EMPLOYEE CONDUCT

Specimen collection will occur in a clinical setting and under strict procedures so as to avoid specimen tampering. Careful chain of custody procedures shall be followed at all times. Any attempt to hinder collection procedures or to adulterate or substitute a urine sample will result in disqualification of an applicant and disciplinary charges against the employee and a retest.

XI. POSITIVE TEST RESULT(s) PROCEDURES

For the purposes of this policy, an employee will not be discipline for prohibited drug and/or alcohol usage until the employee had the opportunity to discuss the results with the MRO and the test is confirmed positive by the MRO.

XII. REFUSAL TO SUBMIT TO TEST

Based on reasonable suspicion and/or post accident, employees who fail or refuse to immediately appear for testing, delay in reporting for a test, refuse or fail to provide a specimen, refuse or fail to attempt to provide a specimen without adequate medical explanation, adulterate or substitute or attempt to adulterate or substitute a specimen, fail to complete any paperwork required by the collection facility, fail to remain at the testing site until the test is completed, or fail to cooperate with any aspect of the testing process shall be considered as testing positive and subject to disciplinary action as set forth in this Policy.

XIII. POSITIVE TEST RESULTS – DISCIPLINARY ACTION

1. In the event a positive test occurs, the following disciplinary action will be implemented:

A. Blood Alcohol Content of .02 - .039 Concentration

- First offense: Verbal Warning
- Second offense: Written Warning
- Third offense: One (1) week suspension without pay
- Fourth offense: Termination of Employment

B. Blood Alcohol Content of .04 or above Concentration and All Other Drugs

- First offense: One (1) day suspension without pay
- Second offense: One (1) week suspension without pay
- Third offense: Termination of Employment

C. The Town will not discipline, discharge or terminate an employee for alcohol or controlled substances test result below the levels established and used by the United States Department of Transportation and/or the Federal Highway Administration. The term “positive controlled substances test” as it is used in this Memorandum of Agreement shall mean a positive test under the levels established and used by the United States Department of Transportation and/or the Federal Highway Administration. Tested levels which fall below these cutoff levels shall be considered negative results.

D. It is agreed that this system of progressive discipline is based upon a rolling thirty-six (36) month period. In the event an employee tests positive for drugs or alcohol, his discipline shall be determined by the number of positive tests for drugs and/or alcohol that remain in his file within the most recent thirty-six (36) month period.

E. Following the period of disciplinary suspension, an employee may use any available accrued time off for drug/alcohol abuse/addiction treatment.

XIV. NEGATIVE TEST RESULTS PROCEDURES

As soon as practicable, the CSEA Unit President shall be provided with a complete listing of all its members who are tested for “reasonable suspicion” or post-accident. CSEA will thereafter review any negative testing results.

XV. CONFIDENTIALITY

All records related to reasonable suspicion and post-accident testing and all results of all drug and alcohol tests will be maintained in individual files separate from the employee's official personnel file.

XVI. EMPLOYEE ASSISTANCE AND REHABILITATION

1. Employee Assistance

The Town shall provide Employee Assistance Program (EAP) services. It shall be the purpose of the EAP to:

- A. Educate employees about the dangers of substance abuse;
- B. Provide a resource for treatment of alcohol and drug abuse problems;
- C. Assist employees with a number of other services unrelated to substance abuse designed to aid in the identification, intervention, and resolution of personal problems (e.g., family, marital, financial, etc.), which negatively impact on the employee's employment with Town.
- D. Provide initial counseling, problem identification, short-term counseling, referral if necessary, to a professional agency or person who can assist the employee to resolve his/her problem and to offer follow up support and monitoring.
- E. The services of the EAP shall be free to any employee. Specifically, the costs of any professional help to which the employee or immediate family member is referred beyond the services of the EAP and what may be covered by the employee's health insurance program.
- F. Use of EAP services or further professional help shall be confidential except when confidentiality is waived by the employee as discussed below. EAP records shall be maintained separately by the EAP Coordinator and shall not be included in personnel files. The EAP Coordinator shall provide the Town with statistical data only regarding the use of the program by Town employees and members of their immediate families. In this regard, there shall be no names or reference of any type whatsoever that would enable any Town official to identify any subject of the EAP program.
- G. If an employee has a positive test, the parties agree to a mandatory referral to EAP and mandatory compliance with the prescribed course of treatment. This will require the employee to sign a waiver authorizing EAP to report to the

Town whether the employee has/has not complied with the prescribed course of treatment.

XVII. AMNESTY REHABILITATION PROGRAM

1. Treatment/Rehabilitation Encouraged

Employees represented by CSEA who have a drug and/or abuse or addiction problem are encouraged to seek treatment and rehabilitation either through the employee's health insurance plan or the Town's EAP program. Participation in this program shall be without fear of any discipline or discharge penalties provided:

- A. Entry and participation in such treatment and rehabilitation must occur prior to employee selection for reasonable suspicion or post-accident testing.
- B. The employee must complete a rehabilitation/counseling program.
- C. The employee must sign any and all releases and/or waivers to allow the Town assurance of employee participation in the rehabilitation/counseling program. Information acquired by the Town shall be viewed only by the Human Resources Department and shall be filed separately from the employee's official personnel file. In all other respects, the employee's right to confidentiality shall be respected.
- D. Confirmed Positive Test Result: A positive drug and/or alcohol test result and the MRO's confirmation of a positive drug and/or alcohol test result following entry in and/or completion of any rehabilitation/treatment program shall be subject to the disciplinary procedure set forth in this policy.

XVIII. GRIEVANCE PROCEEDING

- 1. Any conflict of these provisions in the interpretation, application, unfair or inequitable use of this drug and alcohol policy are subject to the grievance and arbitration procedure as defined in Article 24 of the Collective Bargaining Agreement.

XVIX. PART OF TOWN /CSEA BARGAINING AGREEMENT

1. This Memorandum of Agreement shall be considered part of the TOWN /CSEA collective bargaining agreement as an Appendix O in the contract.

Dated: December ____, 2019.

TOWN

CSEA

Sheila M. Meegan
Town Supervisor

Deborah Mueller
Labor Relations Specialist

Ronald Pfeil
Unit President